

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

February 7, 2006

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, February 7, 2006 at 4:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

CALL TO ORDER and ATTENDANCE

Chairman White called the meeting to order. Present in addition to Mrs. White were Board members Carr, Goddin, Knudson and Lamson. Staff members present were Zoning Administrator Murphy and Secretary Scott.

Chairman White stated there are three public hearings on the agenda today with an additional case continued from the December meeting. She asked if there was anyone present today who would like to address the Board on something other than the cases on the public hearing agenda.

No one in the audience expressed a desire to address the Board on anything other than the cases on the agenda.

PUBLIC HEARINGS

Chairman White introduced the first case for public hearing stating that all five members of the Board previously visited the site.

BZA #05-020: Request of John & Susan Tarley for a special exception in accordance with Section 21-826 of the Zoning Ordinance to reduce the Resource Protection Area buffer for a proposed deck addition on the rear of the single-family dwelling approximately 30 feet from the stream requiring a waiver of 70 feet of the Resource Protection Area buffer. The property is located at 112 Yorkshire Drive, Williamsburg Tax Map Number 552-(10)-00-008 and is zoned Single Family Dwelling District RS-1. Approved.

Chairman White asked the applicant for comments regarding the request. Owner/applicant John Tarley came before the Board with explanation of the request. Since submitting the original proposal in November 2005, the applicant has been working with staff and this revised proposal reflects a reduction in the proposed deck addition from 602 square feet to 399 square feet with the revised deck proposal being located approximately 32 feet from the stream at the closest point instead of 30 feet in the original proposal. It was noted that the deck will be at ground level and water can go through the decking material.

Mrs. Knudson asked if the applicant would be willing to accept the staff recommendation that approval be contingent on installation of plant material as shown on the landscape plan prepared by Harmony Design. Mr. Tarley responded that he and his wife would accept that condition and that the landscape plan improves erosion control while allowing them increased enjoyment of their property.

Chairman White opened the public hearing.

There being no comment the public hearing was closed.

Mrs. Knudson moved that the special exception be approved contingent on the installation of plant material as shown on the landscape plan prepared by Harmony Design dated January 24, 2006 prior to a certificate of occupancy being issued for the deck to mitigate the nonpoint source storm water run off. Mr. Lamson seconded the motion.

Mr. Goddin asked how the landscaping plan will be enforced and Mrs. Murphy replied that as part of the final inspection a site visit will be done and checked against the BZA approval conditions.

The motion carried by roll call vote of 5-0.

Recorded vote on the motion:

Aye: Carr, White, Knudson, Goddin, Lamson
No: None
Absent: None

Resolution of approval is attached to these minutes.

BZA #06-002: Request of the Mid-Atlantic Group for a variance request from Section 21-167 of the Zoning Ordinance to reduce the front yard setback from 35 feet to 20 feet for a new single-family dwelling. The property is located at 116 Washington Street, Williamsburg Tax Map Number 438-(15)-00-E and is zoned Single Family Dwelling District RS-2. Denied.

Chairman White introduced the request for a variance stating that all five members of the Board have visited the site.

Owner and president of The Mid-Atlantic Group, applicant Nick O'Connell, was present with the project superintendent Richard Howell. Mr. O'Connell said he would like to move the proposed house forward on the lot in order to allow room for a detached garage and necessary vehicle turn-around space. He said the average front yard setback of the three houses on that side of Washington Street was 20 feet. He noted the proposed house is in keeping with the character of the neighborhood, and is 1860 square feet with three bedrooms and three bathrooms. Although it is a "spec house" Mr. O'Connell said he does have a prospective buyer.

Mr. Goddin asked about possible alternate options such as leaving the front yard setback at 35 feet or removing/reducing the six foot porches. Mr. O'Connell responded that they are trying to allow for green space and Mr. Howell added that the planned nice interior flow of rooms would need to be changed if their request is not approved.

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Mr. Lamson asked about adjacent property owner, Colonial Williamsburg's response to the request to remove the stand of bamboo separating the two properties. The bamboo stand is currently used as a block and deterrent to traffic onto their grounds. Mr. Howell said at first they were hesitant, but after he gave further explanation at a personal meeting, CW has given him a letter of approval to clear the bamboo.

Mr. Carr said he is especially sensitive to variance requests related to new construction and asked the applicant for help in explaining the hardship in this case. Mr. O'Connell responded that without approval of their variance request, they would not be able to include the detached garage since they would not have enough turn-around space. Mr. Carr noted that the buyer of the house might not want a garage. Zoning Administrator Murphy clarified the Zoning Ordinance requires two off-street parking spaces for a single-family dwelling, not necessarily a garage.

Mrs. White asked if the 1,860 square foot house is as small a house as would be marketable, and Mr. O'Connell responded that he believed it would be about the smallest and reiterated that it is in keeping with the character of the neighborhood. Mr. Goddin pointed out that even if they are not able to have a garage, half the houses on the street don't have garages, but the applicant could still have two parking spaces on the lot. Mr. O'Connell responded that they would need a two foot rear yard setback to make the footprint of the house.

Chairman White opened the public hearing.

There being no comment the public hearing was closed.

Following discussion among Board members which included acknowledgment of two other fairly new homes on the street, setbacks and footprints, Mr. Carr moved that the request be denied based on the fact that there was no hardship demonstrated.

Mrs. Knudson seconded the motion noting her agreement with Mr. Carr's statement and added that setback standards for new construction are tougher than renovation of an existing property. She added that others in the neighborhood have managed to fulfill the requirements.

Mr. Goddin agreed with the previous comments and added that this is not the appropriate place to make a case for zoning changes.

Mrs. White agreed it is challenging to build a saleable house on this lot and a house of this size is very small using today's standards. She noted the exceptionally narrow lot, the unique situation of the right-of-way and the vigorous efforts of the contractor to fit the house on the lot. Mr. Lamson agreed with Mrs. White's comments and said he opposes the motion to deny the request.

Mr. Carr said that after the BZA's recent work session where the Board reviewed various variance cases and court findings, the hardship threshold was not demonstrated or evident in this case.

Mrs. Knudson and Mr. Goddin agreed. They also indicated that this is not the appropriate case to recommend to City Council for a zoning change.

Mr. Lamson said due to the narrowness of this lot, the Board can grant approval of the request. Mrs. White added that economic viability is also something the Board can consider.

The motion to deny the request carried by roll call vote of 3-2.

Recorded vote on the motion:

Aye: Carr, Knudson, Goddin,
No: White, Lamson
Absent: None

Resolution of the denial is attached to these minutes.

BZA #06-003: Request of Donald E. Watson for a special exception in accordance with Section 21-826 of the Zoning Ordinance to reduce the Resource Protection Area buffer, a special exception from Section 21-705.1 of the Zoning Ordinance to increase the maximum amount of parking allowed in a front yard, a twelve foot front yard variance and a four foot side yard variance from Section 21-481 of the Zoning Ordinance for a proposed single-family dwelling. It is proposed to construct a new single-family dwelling that will be located approximately five feet from the edge of wetlands which requires a waiver of the 100 foot Resource Protection Area buffer, increase the maximum amount of front yard parking coverage from 30% to 57% and to encroach twelve feet into the front yard setback for a portion of the garage and four feet into ten foot side yard setback for a portion of the dwelling. The property is located at 7 Wildwood Lane in the Port Anne Subdivision, zoned PUD and is further identified on Williamsburg Tax Map Number 554-(04)-00-063. Approved with Conditions.

Chairman White stated she will abstain from discussion and vote on this case due to a possible conflict of interest. Vice-Chairman Lamson took the gavel.

Vice-Chairman Lamson noted that all Board members except Mrs. White visited the site. He then introduced the requests for two special exceptions and two variances.

Owner Don Watson introduced his builder Joel Sheppard, and George H. Bangs with Stokes Environmental Associates, Ltd. Mr. Watson stated he purchased the property in April of 2003 and has found the majority of the lot to be located in the Resource Protection Area (RPA) portion of the Chesapeake Bay Preservation Area. He noted the Port Anne subdivision was approved prior to the adoption of the Chesapeake Bay Act regulations. Mr. Watson said he and the builder have tried hard to accommodate the restrictions in the redesign of the house, but find they will still need the requested special exceptions and variances. Included in the submittal are four requests: to reduce the RPA buffer to allow the proposed dwelling to be located approximately five feet from the edge of wetlands; to increase the maximum amount of front yard parking coverage from 30% to 57%; and to encroach twelve feet into the front yard setback for a

portion of the garage and four feet into the ten foot side yard setback for a portion of the dwelling.

Mr. Goddin asked Mr. Bangs about his report entitled "Major Water Quality Impact Assessment for Encroachment into the RPA", dated January 20, 2006, in which he notes, "The proposed encroachment within the RPA is the minimum necessary in order to attain a feasible development plan at the subject property while staying within the building setback lines." Mr. Bangs stated the ground water flow will be toward the back of the property, and the project will not cause any direct disturbance of wetlands. He did agree with Mr. Goddin that there may be ground water flow to the RPA.

Mr. Goddin asked for the meaning of another section of the report where it is stated, "Based on the above information, it is our opinion that the proposed project adequately avoids impacts to the extent practicable, minimizes unavoidable impacts, and mitigates the remaining impacts." Mr. Bangs said the best option would be to not build on this lot. However, he is proposing dry wells which will collect, filter and then direct the water to the creek. The wells must be a minimum of ten feet from the structure.

Mr. Carr asked Mr. Bangs about the impact assessment done for a previous case, BZA #03-015, George Tsoucalas at 8 Wildwood Lane. Mr. Bangs said the case is similar but Mr. Tsoucalas has a side loading garage, a larger house and more impervious surface than the Watson proposal.

Vice-Chairman Lamson opened the public hearing.

There being no comment the public hearing was closed.

Mrs. Knudson moved that the requests for special exceptions and variance be approved.

Mr. Goddin stated that he could accept the proposal if the footprint was no larger than the minimum allowed in the area. He would like to see the proposed footprint reduced and the height of the structure raised. Zoning Administrator Murphy noted the City requirement states a maximum footprint coverage and not a minimum footprint coverage.

There being no second to the motion, it was withdrawn by Mrs. Knudson.

Mr. Carr asked if these requests result in more than the Tsoucalas requests and noted he would be able to vote in favor of the requests as long as they are not more than what the Board approved for the neighbor. Mr. Bangs added that Mr. Tsoucalas also had to install a bulkhead. Mr. Carr noted that a good part of Port Anne could not be developed under today's Chesapeake Bay Act requirements.

Mrs. Knudson moved that the request for a special exception to reduce the Resource Protection Area buffer be approved with the following conditions:

- Certification by an engineer of the construction of the dry wells prior to the issuance of any certificate of occupancy for the dwelling.

- A BMP maintenance agreement being submitted and approved by the City and recorded prior to the issuance of any building or land disturbing permits for the dwelling.
- A landscape plan must be submitted, approved by the Zoning Administrator and plant material installed prior to the issuance of a Certificate of Occupancy for the dwelling to mitigate the nonpoint source pollution. All plant material must be suitable plants for riparian buffer plantings.

Mrs. Knudson also moved that the special exception to increase the maximum amount of parking allowed in a front yard and the twelve foot front yard variance and the four foot side yard variance be approved.

Mr. Lamson seconded the motion which carried by roll call vote of 4-0-1.

Recorded vote on the motion:

Aye: Carr, Knudson, Goddin, Lamson
No: None
Abstain: White
Absent: None

Mrs. Knudson said it's a shame these problems have occurred, but the approval is appropriate in fairness to the applicant since the Port Anne community was developed prior to the Chesapeake Bay Preservation Act. Mr. Goddin agreed with the approval in fairness to the applicant, but did so reluctantly due to the possible environmental effect.

Resolution of the approval is attached to these minutes.

OLD BUSINESS

BZA #05-023: Request of Barbara Ramsey for three variances to Sec. 21-167 of the Zoning Ordinance to construct a new single-family dwelling and detached garage on the property: (1) decrease the side yard along Idlewood Lane from 17.5 feet to 16 feet for the main house; (2) decrease the side yard along Idlewood Lane from 17.5 feet to 12.5 feet for the second floor master bedroom wing; and (3) decrease the rear yard along Idlewood Lane from 35 feet to 16 feet for the detached garage. The property is located at 408 Griffin Avenue, Williamsburg Tax Map Number 495-(12)-00-A and is zoned Single Family Dwelling District RS-2. Approved with Conditions.

Chairman White accepted the gavel from Vice-Chairman Lamson and stated that all five members of the Board have previously visited the site. She reopened BZA #05-023 and asked the applicant for comments regarding any changes.

Tom Tingle, Guernsey Tingle Architects, was present representing the applicant, Barbara Ramsey, who was also present. Mr. Tingle gave a brief summary of the situation requiring Ms. Ramsey's requests. The property was purchased about 30 years ago and in the mid-1980s changes were made to the neighborhood creating the current hardships. It is a unique lot with two corners which was created by the development of

the Idlewood Subdivision. The current residence has been owner-occupied on the main and upper floors with the lower level (basement) used as a rental apartment. However, the house has gone beyond its useful lifespan and the plumbing and heating facilities also require replacement. Mr. Tingle said they are bringing several options to the Board and one of their goals is to lessen the visual impact on her neighbor at 410 Griffin Avenue, Helen Panos. He added there was a minimum of a four foot decrease in the height of the garage and showed four alternatives to the Board. Mr. Tingle stated that the applicant was willing to make landscaping part of the approval and would like to submit a schematic drawing for the Zoning Administrator's review rather than return to the Board.

Mr. Carr asked the applicant, Ms. Ramsey which of the four alternatives presented today she preferred and she responded that the first alternative with the shed dormer would be her choice because it allows storage above the garage. Discussion ensued regarding the space; there is to be no kitchen or plumbing facilities. The garage can have plumbing facilities sufficient only to support pool and landscaping needs.

Mrs. White expressed concern that the room above the garage might be used as living space and asked if Ms. Ramsey would be willing to have a condition placed on approval preventing that use. Ms. Ramsey agreed to the condition.

Mr. Goddin asked if he should abstain from voting since he wasn't a member of the Board when the proposal was originally presented. {Consensus of the Board was that Mr. Goddin should vote.} Mr. Goddin stated he doesn't see the hardship in this case; the applicant could stay within the setbacks and still have a home in keeping with the neighborhood. Mr. Tingle said the hardship exists in the long, narrow shape of the lot.

Chairman White opened the public hearing.

Helen Panos, 410 Griffin Avenue, came forward and said she is generally supportive of neighborhood improvements, but is concerned that with this proposal she is faced with a house on her left that is double in size and a very visible garage ten feet away from her lot. She is afraid she will be boxed in with five structures surrounding her and crowding the neighborhood.

Mrs. White asked Ms. Panos which option she would like best if she had to choose. Ms. Panos responded that she would need to look at them more closely, but she felt her true preference would be **no** garage. She was concerned with the height of the structure and what she would be able to see out her back window and yard. Ms. Panos said she also would like to have a garage, but realizes she has no room on her lot.

There being no other comment the public hearing was closed.

Mrs. Knudson moved the three variance requests to construct a new single-family dwelling and detached garage on the property be approved with plumbing facilities limited to the support of pool and landscaping, that the space above the garage not be used as living space (no bathroom, kitchen or living area) and that the applicant can choose which alternative she would prefer.

Mrs. White received an affirmative response to her request to make a friendly amendment to the motion. She amended the motion to add that a schematic design of the landscaping be approved by the Zoning Administrator.

Mrs. White seconded the motion.

Discussion:

- Mr. Lamson said he could not support the motion that gives the applicant the option to choose the alternative. He also said alternative #3 is a detriment to Ms. Panos because of the view of the roof it would provide.
- Mr. Carr noted the first three alternatives are reductions in roof height of 4 feet and the 4th alternative is a 7 foot reduction. Mr. Lamson responded that the view would still be of the roof and a detriment to the neighborhood.
- Mrs. White stated the pitch of the roof could be reduced and alternative #3 is better because it is not a solid mass of roof.
- Mr. Carr said he has no problem with the first two alternatives. He commended the applicant and her representative and noted they have addressed the concerns of the Board regarding the garage. He concluded his comments by saying he agrees with the previous comments about the pitch and massing of the roof.

Mrs. Knudson amended her motion to require alternative #3 being approved for the detached garage with the schematic design for the house and garage being followed as submitted by Guernsey Tingle Architects including the garage doors on the main dwelling and the detached garage containing carriage doors as shown in alternative #3.

Mr. Lamson seconded the motion which carried by roll call vote of 5-0.

Recorded vote on the motion:

Aye: Carr, Knudson, Goddin, Lamson, White
No: None
Absent: None

George Panos, 604 College Terrace, Helen Panos' brother, asked what the difference is between this case and the previous case that was denied, BZA #06-002.

Mr. Carr responded there are several differences; one is that the applicant wanted to build the house, not live in it himself, and sell it at a high price. Another difference was the previous case asked for a front yard variance and this is a rear yard variance. Also a hardship has been demonstrated in this case, versus a self-imposed hardship in the previous case.

Mr. Goddin stated the revisions are a lot stronger than the big gray box of a house, and although the applicant does have a right to build the box, the revised proposal is less imposing on neighboring Ms. Panos. The garage is pretty much at street level and will just look like another house. Mr. Goddin added that he suspects this new home will

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increase the value of the neighborhood and noted the applicant could move elsewhere and rent to three unrelated persons, as the Zoning Ordinance allows. He commended architect Tom Tingle and said he is very impressed with his efforts and accommodating manner in working with City staff and this Board.

Mrs. White said she is comfortable with variance #1 and 2, and before the meeting today and hearing the history of the property and development of the subdivision behind the property, she wasn't supportive. However, she now understands the third request and agrees there is a hardship present that would almost constitute a "taking" if not approved. Mrs. White added that the existing house has served its useful purpose, the proposed new house will not be a detriment to the neighborhood and the applicant has worked with the Board on attaching conditions to the approval.

Resolution of the approval is attached to these minutes.

NEW BUSINESS -- None

MINUTES

After Mrs. White made a correction to the minutes of the January 3, 2006 meeting, the corrected minutes were approved by a vote of 5-0. The minutes of the January 31, 2006 work session were approved as submitted by a vote of 5-0.

Recorded vote on the motions:

Aye: Carr, White, Knudson, Goddin, Lamson
No: None
Absent: None

There being no further business the meeting adjourned at 6:20 p.m.

Respectfully submitted,

Elizabeth L. White, Chairman
Board of Zoning Appeals